

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

MICHAEL E. MONE

Plaintiff,

v.

Civil Action No. 04-11009-NMG

DEPARTMENT OF NAVY

Defendant.

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**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Defendant Department of the Navy hereby moves for judgment in its favor and asks that the Complaint be dismissed in its entirety with prejudice. As set forth more fully in the accompanying Memorandum, the Complaint concerns a single document withheld from plaintiff in response to his Freedom of Information Act Request: the Litigation Report of investigation prepared by and under the direction of Agency attorneys in anticipation of litigation. As such, it is exempt from disclosure under 5 U.S.C. § 552(b)(5) as attorney work product and as pre-decisional, intra-agency deliberations.

WHEREFORE the Court should grant this Motion and order that the judgment be entered in favor of the defendant Department of the Navy.

By their attorney,

**CERTIFICATE OF SERVICE**

I certify that on August 20, 2004, I caused a copy of the foregoing Motion and accompanying Memorandum to be served by first class mail, postage pre-paid, to plaintiff's counsel of record.

/s/ Barbara Healy Smith

Barbara Healy Smith  
Assistant U.S. Attorney

MICHAEL J. SULLIVAN  
United States Attorney

By: /s/ Barbara Healy Smith

BARBARA HEALY SMITH  
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Dated: August 20, 2004

CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 7.1(A)(2)

Pursuant to Local Rule 7.1(A)(2), the undersigned counsel certifies that on the morning of August 20, 2004, she called plaintiff's counsel Kathryn Hand, at Esdaile, Barrett & Esdaile, and informed her, via telephone answering machine, of the grounds for and relief requested by this motion.

/s/ Barbara Healy Smith  
Barbara Healy Smith